# STATE OF MICHIGAN

# COURT OF APPEALS

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| GREAT LAKES SOCIETY,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>April 28, 2011 |
| v<br><br>GEORGETOWN CHARTER TOWNSHIP, GEORGETOWN TOWNSHIP ZONING ADMINISTRATOR and GEORGETOWN TOWNSHIP ZONING BOARD OF APPEALS,<br><br>Defendants-Appellees. | No. 296370<br>Ottawa Circuit Court<br>LC No. 03-045966-AA |

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| GREAT LAKES SOCIETY,<br><br>Plaintiff-Appellant, | |
| v<br><br>GEORGETOWN CHARTER TOWNSHIP and GEORGETOWN CHARTER TWP ZONING BOARD OF APPEALS,<br><br>Defendants-Appellees. | No. 296372<br>Ottawa Circuit Court<br>LC No. 05-051308-AA |

Before: SHAPIRO, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

In Docket Nos. 296370 and 296372, plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition of plaintiff's claims under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 USC 2000cc(b). For the reasons set forth in this opinion, we affirm.

## I. FACTS AND PROCEDURAL HISTORY

This Court has previously issued a published opinion in an earlier interlocutory appeal in this case. *Great Lakes Society v Georgetown Charter Twp*, 281 Mich App 396; 761 NW2d 371

(2008), lv den 485 Mich 973 (2009). Some of the background facts and procedural history will be gleaned from our previous opinion.

Plaintiff "is a Michigan ecclesiastical corporation and an IRS-recognized religious organization . . . and describes itself as ministering to persons having varying degrees of chemical sensitivities to common environmental pollutants." *Great Lakes Society*, 281 Mich App at 399. Plaintiff sought "to construct a two-story building, approximately 9,700 square feet in size, for worship services and supporting ministries, on a six-acre parcel of property owned by GLS pastor John Cheetham . . . , located in defendant Georgetown Charter Township . . . ." *Id.* The property upon which plaintiff sought to construct the building was "zoned low-density residential (LDR)." *Id.* Defendant township's "zoning ordinances permit[] construction of 'churches' in a residential district with a special use permit (SUP)." *Id.* Thus, plaintiff filed two applications for a special use permit (SUP), which defendant zoning board of appeals (ZBA) denied, concluding "that the principal purpose of GLS's proposed building was not for public worship and, therefore, that the proposed building is not a church for purposes of the zoning ordinance." *Id.* at 401, 403.

While plaintiff's "SUP application was pending with the Township, the township board approved an amendment of § 20.4(E) of the zoning ordinance relating to street-frontage requirements for churches constructed in residential districts." *Id.* at 404. Plaintiff's property did not meet the amended street-frontage requirements; plaintiff therefore applied for a variance from the street-frontage requirements in the amended § 20.4(E), and defendant ZBA denied the variance request, "concluding that [plaintiff] failed to meet the specific standards for granting a variance set forth in the zoning ordinance." *Id.*

Plaintiff appealed defendant ZBA's denial of its application for a SUP and its request for a variance to the trial court "by way of two separate complaints, each of which also asserted claims under RLUIPA and the Michigan and United States constitutions, as well as for superintending control." *Id.* at 406. In an opinion and order dated April 12, 2006, the trial court ruled:

> [T]he decision of the ZBA that the proposed building was not a church for zoning purposes was supported by competent, material, and substantial evidence on the record. The trial court further concluded that [plaintiff's] appeal of the ZBA's denial of a variance was moot because, the proposed building not being a church, [plaintiff] was not eligible to apply for the variance sought. [*Id.*]

The trial court's April 12, 2006, opinion did not address plaintiff's RLUIPA or constitutional claims; the opinion stated that those claims "will be tried later." The parties filed cross-motions for summary disposition regarding plaintiff's RLUIPA and constitutional claims, and the trial court issued an opinion and order on July 27, 2007. In relevant part, the trial court granted defendants' motion for summary disposition of plaintiff's "equal terms,"

"nondiscrimination" and "exclusions and limits" claims under RLUIPA, 42 USC 2000cc(b)(1), (2) and (3):

> Count II of the 03 case and Count II of the 05[1] case allege violation of the "nondiscrimination" provision of RLUIPA. 42 USC 2000cc(b)(2) provides, in pertinent part: "No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination." This Court has already held that religious animus played no role in the ZBA's action. Pursuant to MCR 2.116(C)(10), summary disposition is granted in favor of defendants to count II of the 03 case and count II of the 05 case.
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> Count III of the 03 case and count III of the 05 case allege violation of the "equal terms" provision of RLUIPA. 42 USC 2000cc(b)(1) provides, in pertinent part: "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less equal terms with a nonreligious assembly or institution." The undisputed facts in the case at bar provide no support whatsoever for a claim brought under this section of RLUIPA. Pursuant to MCR 2.116(C)(10), summary disposition is granted in favor of defendants to count III of the 03 case and count III of the 05 case.
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> Count V of the 03 case and count V of the 05 case allege violation of the "total exclusion/unreasonable limitation" provision of RLUIPA. 42 USC 2000cc(b) provides, in pertinent part: "(3) . . . No government shall impose or implement a land use regulation that . . . (B) unreasonably limits religious assemblies . . . or structures within a jurisdiction." The undisputed facts demonstrate that defendants have not implemented a land use regulation that unreasonably limits religious assemblies or structures in Georgetown Township. Pursuant to MCR 2.116(C)(8) and (C)(10), summary disposition is granted in favor of defendants to count V of the 03 case and count V of the 05 case.

The trial court also ruled on plaintiff's "substantial burden" RLUIPA claim, 42 USC 2000cc(a)(1), and constitutional claims, but those rulings were addressed in this Court's previous opinion in this case and are not relevant to the present appeal.

On appeal to this Court by leave granted, plaintiff appealed the trial court's opinion and order affirming defendant ZBA's denial of plaintiff's request for a SUP and for a variance, and

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[1] The 03 case refers to plaintiff's complaint arising from the denial of its application for a SUP permit to construct the church, and the 05 case refers to plaintiff's complaint arising from the denial of its request for a variance from the amended § 20.4(E), which relates to street-frontage requirements for churches constructed in residential districts.

defendants appealed "the trial court's opinion and order granting [plaintiff] partial summary disposition on its claims under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 USC 2000cc *et seq*., and the Michigan and United States constitutions." *Great Lakes Society*, 281 Mich App at 398.

In our opinion on interlocutory appeal, we ruled that the trial court erred in affirming defendant ZBA's denial of plaintiff's request for a SUP, not because defendants' conduct was discriminatory, but because the trial court applied the wrong standard in determining whether the proposed building constitutes a church:

> [T]he circuit court erred in concluding that Michigan law requires that a proposed building constitutes a church only if its principal use is public worship. Consequently, the circuit court erred in concluding that GLS's proposed building does not constitute a church. Rather, the correct standard is whether the building is used for public worship and reasonably closely related activities or uses. The record evidence is undisputed that the proposed building was to be used for regular public worship. Further, the other identified uses are reasonably closely related, in substances and in space, to that public worship use. Therefore, the proposed GLS building constitutes a church for purposes of the zoning ordinance. [*Id.* at 408-409.]

Regarding plaintiff's appeal of the trial court's affirmance of the denial of plaintiff's request for a variance, we determined that the amended zoning ordinance, § 20.4(E), applied because defendant amended the ordinance to clarify the township's intention that churches constructed in residential districts have a minimum of 200 feet of frontage on a major street and "the amendment was merely intended to provide that clarification, not to concoct a reason to deny [plaintiff's] application." *Id.* at 420-421. We further determined that "the decision not to grant [plaintiff] a variance was based on the large deviation requested, the purposes of the 200-foot requirement, and the traffic and public safety issues that could result from allowing [plaintiff] to establish a church on this parcel of property" and that the denial of the variance was based on competent, material and substantial evidence. *Id.* at 422.

We also held that defendant did not violate the "substantial burden" provision of RLUIPA, 42 USC 2000cc(a)(1), in applying the ordinance to prevent the location of the proposed building at the location where plaintiff wanted to build it because "the record demonstrates that GLS could locate a church at some other location within the Township as long as the property chosen has a 200-foot street frontage and otherwise complies with the ordinance." *Id.* at 424.

Finally, we addressed plaintiff's claims that the ordinance violated plaintiff's members' rights "to freely exercise their religion, to freely associate, and to be afforded equal protection under the United States and Michigan constitutions." *Id.* at 424-425. For reasons that will be explained in more detail below, we rejected plaintiff's constitutional claims.

In light of our conclusions, we reversed the trial court's decision affirming defendant ZBA's conclusion that the proposed building was not a church under the zoning ordinance, affirmed the decision of the ZBA denying plaintiff's request for a variance, and remanded for

entry of an order granting defendants summary disposition of plaintiff's statutory and constitutional claims. *Id.* at 427-428. Our Supreme Court denied leave on November 23, 2009. *Great Lakes Society v Georgetown Charter Twp*, 485 Mich 973; 774 NW2d 860 (2009).

On November 25, 2009, after we issued our published opinion in this matter and after our Supreme Court denied leave, plaintiff moved for reconsideration of the trial court's July 27, 2007, opinion and order granting defendants' motion for summary disposition of plaintiff's claims under the "equal terms," "nondiscrimination" and "exclusions and limits" provisions of RLUIPA, 42 USC 2000cc(b)(1), (2) and (3). In its motion, plaintiff correctly observed that these RLUIPA claims were not decided in this Court's published opinion. According to plaintiff, the trial court improperly concluded that certain evidence that the parties submitted after the trial court's April 12, 2006, opinion and order was irrelevant and collateral, and that this Court viewed this evidence as relevant and considered it in deciding this case on interlocutory appeal. Plaintiff contended that this evidence created a genuine issue of material fact regarding plaintiff's RLUIPA claims under 42 USC 2000cc(b).

On January 15, 2010, the trial court entered an opinion and order denying plaintiff's motion for reconsideration of that part of the trial court's July 20, 2007, order granting defendants' motion for summary disposition of plaintiff's RLUIPA claims under 42 USC 2000cc(b). The trial court's rationale for denying plaintiff's motion was that plaintiff filed the motion 28 months after entry of the order, and MCL 2.119(F)(1) requires a motion for reconsideration to be filed within 21 days after entry of the order. In addition, regarding plaintiff's claims under RLUIPA, the trial court observed that this Court rejected plaintiff's argument that the zoning scheme treats churches less favorably than some commercial enterprises and found that there were proper reasons for defendant to deny the permit. On January 18, 2010, the trial court entered an order granting summary disposition to defendants on all claims as directed by this Court in *Great Lakes Society*, 281 Mich App at 427-428.

Plaintiff now appeals the trial court's order granting summary disposition in favor of defendants regarding plaintiff's RLUIPA claims under 42 USC 2000cc(b)(1), (2) and (3), as well as the trial court's denial of plaintiff's motion for reconsideration.[2]

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[2] As we observed in our previous opinion in this case, plaintiff did not, at that time, cross-appeal the trial court's granting of defendants' motion for summary disposition regarding plaintiff's remaining RLUIPA claims:

> The trial court concluded . . . that the [defendants] actions did not violate the "equal terms," "nondiscrimination," or "total exclusion/unreasonable limitation" provisions of RLUIPA, 42 USC 2000cc(b) . . . . [Plaintiff] has not cross-appealed the trial court's grant of partial summary disposition to defendants on the counts of its complaints presenting these claims. [*Great Lakes Society*, 281 Mich App at 407 n 10.]

## II. STANDARDS OF REVIEW

This Court's review of a trial court's grant of summary disposition pursuant to MCR 2.116(C)(10)[3] is as follows:

> This Court reviews de novo a trial court's grant or denial of summary disposition under MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Downey v Charlevoix Co Rd Comm'rs*, 227 Mich App 621, 625; 576 NW2d 712 (1998). The pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties must be considered by the court when ruling on a motion brought under MCR 2.116(C)(10). *Downey*, *supra* at 626; MCR 2.116(G)(5). When reviewing a decision on a motion for summary disposition under MCR 2.116(C)(10), this Court "must consider the documentary evidence presented to the trial court 'in the light most favorable to the nonmoving party.'" *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 539; 620 NW2d 836 (2001), quoting *Harts v Farmers Ins Exchange*, 461 Mich 1, 5; 597 NW2d 47 (1999). A trial court has properly granted a motion for summary disposition under MCR 2.116(C)(10) "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). [*Clerc v Chippewa Co War Mem Hosp*, 267 Mich App 597, 601; 705 NW2d 703 (2005), remanded in part 477 Mich 1067 (2007).]

This Court reviews a trial court's decision whether to grant a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). The abuse of discretion standard recognizes "'that there will be circumstances in which . . . there will be more than one reasonable and principled outcome.'" *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006), quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Under this standard, "[a]n abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). The movant must demonstrate that the trial court made a palpable error and that a different disposition would result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration that presents the same issues already ruled on by the court will generally not be granted. *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 82-83; 669 NW2d 862 (2003); MCR 2.119(F)(3).

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[3] The trial court granted summary disposition of plaintiff's "equal terms" and "nondiscrimination" RLUIPA claims under MCR 2.116(C)(10) and granted summary disposition of plaintiff's "exclusions and limits" RLUIPA claim under MCR 2.116(C)(8) and (10). Plaintiff does not appeal the trial court's granting of summary disposition of its "exclusions and limits" claim under MCR 2.116(C)(8).

## III. ANALYSIS

### A. SUMMARY DISPOSITION

Plaintiff argues that the trial court erred in granting defendants' motion for summary disposition of plaintiff's RLUIPA claims under 42 USC 2000cc(b).

"RLUIPA is the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens . . . ." *Cutter v Wilkinson*, 544 US 709, 714; 125 S Ct 2113; 161 L Ed 2d 1020 (2005). The portion of RLUIPA at issue in this case focuses on land use regulations[4] and provides, in relevant part:

> **(b) Discrimination and exclusion.** (1) Equal terms. No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.
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> (2) Nondiscrimination. No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.
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> (3) Exclusions and limits. No government shall impose or implement a land use regulation that—
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> > (A) totally excludes religious assemblies from a jurisdiction; or
> >
> > (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction. [42 USC 2000cc.]

As a preliminary matter, we observe that defendants assert that plaintiff's RLUIPA claims under 42 USC 2000cc(b) were rendered moot by this Court's affirmance of the denial of plaintiff's request for a variance. An issue is moot if circumstances render it impossible for the court to grant relief. *Crawford v Dep't of Civil Service*, 466 Mich 250, 261; 645 NW2d 6 (2002). Plaintiff sought injunctive and monetary relief in both its complaint regarding the denial of its application for a SUP and its complaint regarding the rejection of its request for a variance. According to plaintiff, even if it was impossible for the trial court to grant injunctive relief, it could still award damages because damages are available to remedy a RLUIPA violation. Defendants assert that our holding in *Great Lakes Society*, 281 Mich App 396, 422, affirming the denial of plaintiff's request for a variance, renders moot plaintiff's RLUIPA claims for injunctive relief and for damages. Defendants further contend that the law is unsettled regarding whether damages are available to remedy a RLUIPA violation.

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[4] RLUIPA also protects the religious exercise of institutionalized persons, 42 USC 2000cc-1, but those provisions are not at issue in this case.

We decline to address defendants' mootness argument for several reasons. First, the issue is not preserved because the trial court did not address it.[5] *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Second, contrary to plaintiff's assertion, it is not clear that damages are an available remedy for a violation of RLUIPA. The language of the statute itself does not specifically provide for a damage remedy. Rather, it provides for "appropriate relief against a government." 42 USC 2000cc-2(a). The case law is conflicting regarding the availability of a damage remedy for a violation of RLUIPA. See *Pugh v Goord*, 571 F Supp 2d 477, 506 (SD NY, 2008) ("The question of whether plaintiffs may recover monetary damages under RLUIPA is unsettled in this and other circuits."). As plaintiff notes, there are cases that have held that damages are an available remedy under the statute. See, e.g., *Chase v Portsmouth*, 428 F Supp 2d 487, 490 (ED Va, 2006) (stating that it is well-settled that damages can be found against a defendant city under the RLUIPA); *Lighthouse Community Church of God v Southfield*, 2007 US Dist LEXIS 15973 (Docket No. 05-40220; ED Mich, March 7, 2007). On the other hand, however, there are cases that have held that damages are not available under the statute. *Pugh*, 571 F Supp 2d at 506-509; *Boles v Neet*, 402 F Supp 2d 1237, 1241 (D Colo, 2005) ("[W]hile the statute permits 'appropriate relief against a government' it does not appear that the statute permits a claim for damages."). Third, the United States Supreme Court recently granted certiorari in the case of *Sossamon v Texas*, 560 F3d 316 (CA 5, 2009), to determine "'[w]hether an individual may sue a State or state official in his official capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq. (2000 ed.)'" *Sossamon v Texas*, __ US __ ; 130 S Ct 3319; 176 L Ed 2d 1218 (2010). For these three reasons, we decline to address defendants' mootness argument.

Addressing the merits of plaintiff's argument, we hold that the trial court properly granted defendants' motion for summary disposition of plaintiff's "equal terms," "nondiscrimination" and "exclusions and limits" RLUIPA claims, 42 USC 2000cc(b)(1), (2) and (3). Plaintiff asserts that in granting defendants' motion, the trial court failed to consider competent evidence of discrimination obtained through discovery, as evidenced by the following statement made by the trial court in its July 27, 2007, opinion and order:

> Subsequent to the Court's opinion and order filed April 12, 2006, the parties submitted numerous affidavits and other documents in support of their cross-motions. The Court has reviewed this material and concluded that the matter

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[5] In its April 12, 2006, opinion and order affirming defendants' denial of plaintiff's application for a SUP and its request for a variance, the trial court concluded that plaintiff's appeal of defendants' denial of the variance was moot in light of the trial court's affirmance of defendants' decision that plaintiff's proposed facility was not a church. However, the trial court did not rule on whether our affirmance of the denial of plaintiff's request for a variance, *Great Lakes Society*, 281 Mich App at 422, mooted plaintiff's claim for an injunction or damages in plaintiff's complaint arising from the denial of its application for a SUP, and the trial court never addressed whether damages are an available remedy for a RLUIPA violation.

> contained therein is irrelevant or, at best, collateral to the claims pled in the remaining counts.

According to plaintiff, this Court considered this evidence in deciding the interlocutory appeal in this case, and the trial court also should have considered it instead of deeming it irrelevant and collateral.

We observe that to the extent that we considered this evidence in deciding the interlocutory appeal, we did not hold that defendants' conduct was discriminatory in denying plaintiff's application for a SUP or variance or in amending the zoning ordinance. To the contrary, we recognized that defendant township amended § 20.4(E) to clarify its longstanding intention "that churches constructed in residential districts have a minimum of 200 feet of frontage on a major street" and "that the amendment was merely intended to provide that clarification, not to concoct a reason to deny [plaintiff's] application." *Great Lakes Society*, 281 Mich App at 418 n 17, 420-421.

Similarly, we did not hold that the evidence cited by plaintiff provided evidence of discrimination regarding plaintiff's other claims, including plaintiff's claim that defendants violated the "substantial burden" provision of RLUIPA, 42 USC 2000cc(a)(1), and plaintiff's claims that defendants' conduct violated plaintiff's members' rights "to freely exercise their religion, to freely associate, and to be afforded equal protection under the United States and Michigan constitutions." *Id.* at 424-425. To the contrary, our reasoning and holdings regarding plaintiff's constitutional claims indicate our rejection of the notion that defendants' conduct was discriminatory. In rejecting plaintiff's free exercise claim, we stated: "the record demonstrates that the street frontage requirement and its imposition on [plaintiff] was a valid exercise of a generally applicable scheme to accommodate competing interests within the Township, traffic issues, and other community concerns." *Id.* at 426. In rejecting plaintiff's freedom of association claim, we stated:

> The 200-foot street frontage requirement . . . applies to all churches regardless of the message they espouse and is, therefore, content neutral. There is no apparent manner, and [plaintiff] suggests none, in which the ordinance might be more narrowly tailored to meet the valid traffic and other purposes that the record demonstrates it advances. As explained earlier, the ordinance leaves open other channels for [plaintiff] to exercise its right to associate, on other parcels of property within the Township. [*Id.* at 426-427.]

Finally, in rejecting plaintiff's equal protection claim, we stated:

> With respect to the variance request, the record here shows that all churches within the Township have been treated alike. Almost all have been allowed only on parcels of property that have a 200-foot street frontage. The few exceptions have a street frontage available that is much close to that requirement, in comparison to the parcel on which [plaintiff] sought to locate its proposed building. Therefore, [plaintiff] has failed to show that it has been treated differently from any similarly situated church. [*Id.* at 427.]

We first address plaintiff's argument that the trial court erred in granting summary disposition of its "equal terms" RLUIPA claim, 42 USC 2000cc(b)(1). To prove this claim, plaintiff was required to establish that defendant treated plaintiff less favorably in processing, determining and deciding plaintiff's application for a special use permit than it treated a similarly situated non-religious assembly or institution. 42 USC 2000cc(b)(1); *Rocky Mt Christian Church v Bd of Co Comm'rs of Boulder Co*, 613 F3d 1229, 1236 (CA 10, 2010). In our previous decision in this case, we declined to consider whether the "equal terms" provision of RLUIPA was violated due to plaintiff's failure to properly preserve or argue the issue on appeal. However, we did state regarding this claim:

> Further, the gist of the argument is that the Township's zoning scheme treats churches less favorably than some commercial enterprises, but, as a matter of fact, that is not the case. Most of the commercial enterprises about which GLS complains are completely prohibited from locating in residential zoning districts. The imposition of certain conditions, like the 200-foot street frontage requirement, on churches that want to locate in residential districts certainly does not treat them less favorably in comparison with others that are simply excluded altogether. [*Great Lakes Society*, 281 Mich App at 423, n 20.]

Although these statements were made in reference to plaintiff's variance request, none of the evidence cited in plaintiff's brief establishes an issue of fact regarding whether defendant treated plaintiff less favorably in processing, determining and deciding plaintiff's application for a SUP than a similarly situated non-religious assembly or institution. We therefore reject plaintiff's argument that the trial court erred in dismissing its "equal terms" RLUIPA claim.

We next address plaintiff's argument that the trial court erred in dismissing its "nondiscrimination" RLUIPA claim, 42 USC 2000cc(b)(2). According to plaintiff's brief on appeal, various township officials made statements that the proposed facility was not a church for denominational purposes, suggesting that the gathering of two or three individuals was not a church and questioning whether the minister was a true minister. Plaintiff asserts that this evidence demonstrates defendants' hostility toward plaintiff's church. Furthermore, plaintiff contends, the source of this hostility was plaintiff's minister's father's statements that the minister did not have credentials and was not a preacher and that the church was a cult, not a church, as well as statements made by Dan Lennington that disparaged the church, called the church a business that is designated as a church and opined that he did not think that asking participants to be fragrance-free would be conducive to public worship. Plaintiff also contends that defendant township's policies discriminate on the basis of religion. Specifically, plaintiff contends that there was evidence that defendants did not consider plaintiff's proposed facility to be a church because of its limited seating capacity and the fact that the facility would only serve a small group and that to be considered a church a building should be regularly and predominantly used as a place for public worship. According to plaintiff, this evidence is indicative of defendant township's discriminatory policies.

To establish a "nondiscrimination" claim under RLUIPA, plaintiff must establish that defendants discriminated against it based on religion or religious denomination. 42 USC 2000cc(b)(2). We cannot conceive how the evidence cited by plaintiff constitutes discrimination based on religion or religious denomination. Plaintiff does not explain how the fact that certain

individuals may have made negative or hostile comments about plaintiff's proposed church translates into discrimination on the part of defendants. Moreover, much of the evidence cited by plaintiff concerns defendants' concern with the size of the church and the number of its congregants. The size of a church and number of congregants in a church are relevant to whether the church is a place of public worship, which is a nondiscriminatory concern related to whether a proposed facility constitutes a church under defendants' ordinances and Michigan law.

Plaintiff also cites other evidence that it asserts shows how "the Township treated other churches more favorably than [plaintiff.]" According to plaintiff, like plaintiff's proposed building, other area churches housed a host of ancillary services, including youth centers, preschools, coffee bars and libraries, other area churches offered counseling (for a donation or fee) and ministerial services, other area churches had sanctuaries that comprised less than 30 percent of the church building, and other area churches had quasi-commercial ventures to raise money for various causes. Plaintiff fails to explain how this evidence establishes discrimination on the basis of religion or religious denomination. If defendants did, in fact, grant SUPs or variances to some of these other churches that provided similar services, had a similar percentage of the church building devoted to the sanctuary, and had quasi-commercial ventures, this would tend to establish that defendant was *not* engaging in general discrimination on the basis of religion. Furthermore, plaintiff does not explain how such facts constitute evidence that defendants were discriminating against plaintiff based on "religious denomination." 42 USC 2000cc(b)(2). As presented by plaintiff, the evidence does not assert what religious denominations these other churches were. Plaintiff's argument in this regard is without merit.

Plaintiff also argues that the fact that the zoning administrator canceled a hearing that was scheduled regarding plaintiff's SUP application and the fact that plaintiff's initial plan was rejected due to the lack of an architectural plan when defendants had never required any SUP applicant to submit architectural drawings "have the classic trademarks of discriminatory purpose . . . ." Again, however, the fact that defendants did not always cancel hearings for churches applying for SUPs and did not require the submission of architectural plans for other churches applying for SUPS tends to establish that defendants were not engaging in general discrimination on the basis of religion. And, to the extent that plaintiff fails to assert what religious denominations these other churches were, plaintiff has failed to establish an issue of material fact regarding whether defendants discriminated against plaintiff based on religious denomination.

Plaintiff finally argues that the evidence establishes a genuine issue of material fact regarding whether defendants violated the "exclusions and limits" provision of 42 USC 2000cc(b)(3)(B). This RLUIPA provision prohibits defendant from imposing a land use regulation that "unreasonably limits religious assemblies, institutions, or structures . . . ." 42 USC 2000cc(b)(3)(B). In support of its argument, plaintiff cites *Rocky Mt Christian Church*, 613 F3d 1229, which held:

> The district court's instruction properly required RMCC to establish that the County's "regulation, as applied or implemented, has the effect of depriving both [RMCC] and other religious institutions or assemblies of reasonable opportunities to practice their religion, including the use and construction of structures, within Boulder County. The jury was also properly instructed that it could "find that the

> land use regulation . . . imposes unreasonable limits even though religious assemblies are not totally excluded from Boulder County." [*Id.* at 1238 (citations omitted).]

According to plaintiff, defendants applied neutral land use laws in an unreasonable manner. However, beyond generally referring to the evidence that it alleges the trial court improperly refused to consider, and citing *Rocky Mt Christian Church*, 613 F3d 1229, for the proposition that a land use regulation can be unreasonable even if it does not totally exclude religious assembly, plaintiff does not assert how defendants' conduct was unreasonable. As we noted in our previous opinion in this case, "[a] party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim or to search for authority to sustain or reject that party's position." *Great Lakes Society*, 281 Mich App at 423, n 20, citing *Goolsby*, 419 Mich at 655 n 1; *In re Toler*, 193 Mich App at 477. In any event, we do not agree that the evidence cited by plaintiff indicates that defendants' conduct regarding the denial of the SUP and variance was unreasonable. To the extent that plaintiff relies on the fact that we considered the evidence plaintiff alleges the trial court failed to consider in granting summary disposition of plaintiff's RLUIPA claims under 42 USC 2000cc(b) in our previous opinion in this case, we note that we did not find defendants' conduct to be unreasonable or discriminatory, although we concede that we considered this evidence in the context of separate, but somewhat similar, claims.

Plaintiff also argues that the trial court erred in failing to recognize that plaintiff's complaints contained a "nondiscrimination" RLUIPA claim under 42 USC 2000cc(b)(2). According to plaintiff, the trial court either overlooked that count in plaintiff's complaints or mistakenly failed to differentiate between 42 USC 2000cc(b)(1) and 42 US 2000cc(b)(2).

The trial court did not overlook plaintiff's "nondiscrimination" claim in granting defendants' motion for summary disposition of the claim:

> Count II of the 03 case and count II of the 05 case allege violation of the "nondiscrimination" provision of RLUIPA. 42 USC 2000cc(b)(2) provides, in pertinent part: "No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination." This Court has already held that religious animus played no role in the ZBA's action. Pursuant to MCR 2.116(C)(10), summary disposition is granted in favor of defendants to count II of the 03 case and count II of the 05 case.

Nothing in the trial court's statements indicate any confusion on the trial court's part regarding the existence of plaintiff's "nondiscrimination" claim under 42 USC 2000cc(b)(2), at least at the time it granted defendants' motion for summary disposition of the claim. The trial court's statements clearly refer to plaintiff's "nondiscrimination" claims in both complaints and properly cite the language of a "nondiscrimination" RLUIPA claim.

The trial court conceded on the record at the hearing on plaintiff's motion for reconsideration that it "may have misunderstood exactly what was meant by the two-count—or two-paragraph count of Count II of Plaintiff's Complaint . . . ." Although the trial court's

statements appear to acknowledge a degree of confusion regarding plaintiff's "nondiscrimination" claim at the time of the motion for reconsideration, there is no indication that the trial court was confused when it granted defendants' motion for summary disposition of plaintiff's "nondiscrimination" RLUIPA claim. Moreover, any confusion on the part of the trial court regarding the claim could have been caused, at least in part, by the fact that plaintiff mistakenly numbered both its "nondiscrimination" and "equal terms" RLUIPA claims as Count II in the SUP complaint. Error requiring reversal may not be predicated upon error to which the aggrieved party contributed by plan or negligence. *In re Utrera*, 281 Mich App 1, 11; 761 NW2d 253 (2008).

Even assuming that the trial court was confused at the time of the summary disposition motion, which it clearly was not, any error in this regard is harmless given our holding that plaintiff failed to establish a genuine issue of material fact regarding its "nondiscrimination" claim. To the extent that plaintiff asserts this confusion impacted the trial court's denial of its motion for reconsideration, this argument is without merit because the trial court properly denied plaintiff's motion for reconsideration for reasons that were unrelated to any alleged confusion regarding plaintiff's "nondiscrimination" RLUIPA claim.

## B. RECONSIDERATION

Plaintiff next argues that the trial court erred in denying its motion for reconsideration of its opinion and order granting summary disposition of its RLUIPA claims under 42 USC 2000cc(b)(1), (2) and (3). The opinion and order granting summary disposition of these claims was dated July 27, 2007. Plaintiff moved for reconsideration of that opinion and order on November 25, 2009. MCR 2.119(F)(1) provides: "Unless another rule provides a different procedure for reconsideration of a decision (see, e.g., MCR 2.604[A], 2.612), a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 21 days after entry of an order deciding the motion." In this case, plaintiff's motion for reconsideration was filed approximately two years and four months after the opinion and order granting summary disposition. Plaintiff's motion clearly was not timely under MCR 2.119(F)(1).

However, plaintiff asserts that the exception for MCR 2.604(A) applies in this case. That rule provides:

> Except as provided in subrule (B), an order or other form of decision adjudicating fewer than all the claims, or the rights and liabilities of fewer than all the parties, does not terminate the action as to any of the claims or parties, and the order is subject to revision before entry of final judgment adjudicating all the claims and the rights and liabilities of all the parties. Such an order or other form of decision is not appealable of as of right before entry of final judgment. A party may file an application for leave to appeal from such an order. [MCR 2.604(A).]

MCR 2.604(A) grants a trial court the authority to revisit its prior rulings unless it has entered a final judgment that adjudicates all the claims, rights and liabilities of the parties. *Hill v City of Warren*, 276 Mich App 299, 307; 740 NW2d 706 (2007). However, the plain language of the rule does not require or mandate a trial court to revisit its prior rulings. The primary basis

for plaintiff's motion for reconsideration was plaintiff's contention that the trial court erred in failing to consider documentary evidence submitted after the trial court's opinion and order of April 12, 2006, when this Court deemed such evidence relevant in deciding the interlocutory appeals in this case. For the reasons outlined above, the trial court properly granted summary disposition of plaintiff's RLUIPA claims under 42 USC 2000cc(b)(1), (2) and (3). Thus, plaintiff has failed to demonstrate palpable error. Because the trial court properly granted summary disposition of plaintiff's RLUIPA claims under 42 USC 2000cc(b)(1), (2) and (3), and plaintiff's motion for reconsideration was not timely, the trial court did not abuse its discretion in denying the motion.

Affirmed. Defendants, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello